

TO:	ACTION	COORD	INFO
EO/ICS			<del>ABS</del> SAPR2
D/ICS			<del>X</del> 1
DD/ICS			<del>X</del> 2 ICS
DD/RE			<del>X</del>
EA-D/ICS			
SA-D/ICS			
SA-D/ICS-EP <i>NICS</i>			X 3
REO			X 4
COMIREX			X 5
SIGINT			X 6
HUMINT			X 7
MASINT			X 8
IPC			X 9
PBO			X 10
PPO			X 11
CCISCMO			X 12
IHC			X 13
RDCO			X 14
LL			V 15
SECRETARIAT			X 16
ADMIN			X 17
REGISTRY	05 APR 1988	<i>DB</i>	
SUSPENSE: _____ Date			
REMARKS:			

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CIA-RDP90M00551R002201620025-1

*V/LC Staff*  
ROOM NO.

BUILDING

REMARKS:

FROM:

ROOM NO.

BUILDING

EXTENSION

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CIA-RDP90M00551R002201620025-1

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SEC 3-SP2 4 MAR 1988

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05 APR 1988  
IC STAFF

MEMORANDUM FOR: Deputy Director of Central Intelligence

VIA: Executive Director  
Deputy Director for Administration  
General CounselFROM:   
Director of SecuritySUBJECT: Proposed Executive Order to Govern Access to  
Classified InformationREFERENCE: Memo for ADCI fm D/OS dtd 27 Feb 87, Subj:  
Draft Executive Order to Govern Access to  
Classified Information

1. Action Requested: Certain provisions of the Executive Order proposed by the Department of Justice to govern access to classified information remain inconsistent with important CIA and Intelligence Community prerogatives and, if approved, would seriously erode DCI statutory authority. You are requested to address this concern with Lieutenant General Colin L. Powell, Assistant to the President for National Security Affairs, and to notify him that we are drafting specific language to amend the Order. Attached for your signature is a letter to General Powell summarizing our objections to the proposed Order and requesting that the NSC convene a staff-level meeting of the affected agencies upon receipt of our proposed language. Meanwhile, an effort will be made to obtain the concurrence of two of the major participants in the drafting process--the Department of Defense and the Office of Personnel Management--in specific language that would amend the Executive Order and safeguard our equities. A second letter to General Powell containing the appropriate exempting language will then be sent forward for your signature.

2. Background: The Deputy Attorney General has forwarded to the President, through the NSC, the current draft of a proposed Executive Order on personnel security. In a covering memorandum to the President, the Deputy Attorney General cites

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five issues which require resolution and recommends to the President that these issues be resolved quickly to permit adoption of the Order. Issues 1 and 4 concern proposed oversight and appeals procedures. Each is severely misrepresented and falls short of reflecting Agency concerns. Issues 2, 3, and 5 address investigative standards, reinvestigations, and the need for a current review of Executive Order 10450. These issues are succinctly stated, and the related recommendations are reasonable.

3. Tab A is a copy of my memorandum to you dated 26 February 1987 identifying the issues of concern at that time. Tab B is a copy of your letter to the Attorney General dated 18 March 1987 wherein you emphasize the impact this Order would have on DCI statutory authorities. Tab C is the Attorney General's reply of 25 March 1987. Tab D consists of a copy of the Deputy Attorney General's 20 November 1987 letter to the President and the current draft Executive Order.

4. Regretfully, the follow-up meetings you suggested between representatives of the Department of Justice (DoJ), the Office of General Counsel, and members of my own staff, produced little in the way of substantive agreement. In particular, the concerns we had with respect to oversight by the Information Security Oversight Office (ISOO) and the procedures involved in processing security clearances continue essentially unresolved. I remain convinced that the intrusive aspects of these provisions warrant our continued vigorous opposition.

5. To reiterate, Issues 1 and 4 cause grave concern. Specifically, Issue 1 addresses oversight of government-wide personnel security programs and would delegate extensive oversight authority for personnel security matters to ISOO. As stated in your 19 March 1987 letter to the Attorney General, "The sweeping oversight provisions..., which effectively permit ISOO to direct aspects of our security programs and second-guess security policy and other determinations made by the DCI, conflict with the statutory responsibility of the DCI to protect intelligence sources and methods." Oversight autonomy for either the Central Intelligence Agency or other appropriate intelligence agencies has not been expressly provided for in the current draft. Also, a series of Agency proposals to moderate ISOO oversight in a manner consistent with Agency interests proved futile. In short, we are back where we started relative to oversight.

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6. Issue 4 would establish security clearance appeal procedures for all on-board Agency personnel and extend the right of appeal to contractor employees with access at the collateral classified level. Not only would this provision override existing DCI authority, it would clearly establish procedures that do not now exist and are not required by law. With respect to the contractor world specifically, I would add, parenthetically, that appeal procedures do exist, to be sure, but are confined to the SCI environment only under the circumstances as mandated by DCID 1/14.

7. I am informed that representatives of the Office of General Counsel have alerted NSC legal officials to our concerns and that the Order is now on hold pending formal word from the Agency. In view of earlier unproductive efforts through DoJ to incorporate alternative language into the Order, a different approach is needed. Specific language exempting the Agency and other intelligence agencies, as appropriate, from oversight and appeal procedures is, in my view, a prudent next step in our efforts to gain relief from this unwarranted intrusion on the discretionary authority of the DCI.

8. I believe it is essential that the Assistant to the President for National Security Affairs clearly understands the equities at stake and the need to resolve the substantial disagreements which remain. Therefore, you are requested to sign the attached letter to General Powell advising him that specific language to amend the draft Order will be forthcoming and requesting that the NSC Staff convene a meeting of the affected agencies upon receipt of our proposed language. A second letter to General Powell, transmitting the appropriate exempting language, will soon be forwarded for your signature. If you wish to be briefed further on this matter, please contact me at your convenience.

STAT

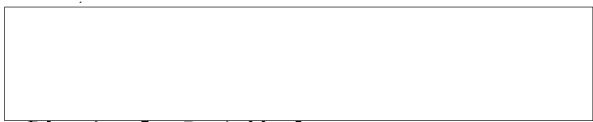
Attachments

cc: Director, Intelligence Community Staff

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SUBJECT: Proposed Executive Order to Govern Access to  
Classified Information


CONCUR:

STAT   
General Counsel


25 March 88  
Date

STAT   
Deputy Director for Administration

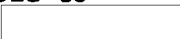
30 March 88  
Date

STAT   
Executive Director

31 March 1988  
Date

STAT *With so many people biting at our  
ankles, it's a wonder we're able to get  
anything done. I support *

STAT *proposed approach. This is ludicrous.*  


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STAT   


The Deputy Director of Central Intelligence

Washington, D.C. 20505

ER-1317-88

4 APR 1988

Lieutenant General Colin L. Powell  
Assistant to the President for  
National Security Affairs  
Washington, D.C. 20506

Dear General Powell:

I have reviewed the Department of Justice draft Executive Order on personnel security, which would establish government-wide policy concerning access to classified information. Further, I have reviewed the transmittal materials which would accompany the draft Executive Order. Based upon my review, I have concluded that certain provisions of the draft Order would erode the statutory responsibilities of the Director of Central Intelligence (DCI) and are, therefore, unacceptable. Moreover, I believe that the proposed transmittal materials do not adequately discuss certain issues that have generated substantial disagreement.

Previously, on 18 March 1987, I informed the Attorney General of my concerns and suggested that our representatives meet to attempt resolution of our outstanding differences with respect to the draft Order. A meeting did take place between our representatives at that time, but the final draft Order forwarded to you does not accommodate my concerns.

The draft Order which delegates extensive "oversight" authority for personnel security matters to the Information Security Oversight Office (ISOO) to direct aspects of our security program, and to second-guess security policy and other determinations made by the DCI, would undercut the statutory responsibility of the DCI to protect intelligence sources and methods. The Order must expressly provide for oversight autonomy for the Central Intelligence Agency and, as appropriate, other intelligence agencies.

The Order also imposes, as mandatory, a set of administrative appeal procedures for the revocation of security clearances and approvals which must be followed unless the DCI personally certifies otherwise in each case. There is nothing in current law that requires this, and I consider such a requirement an unwarranted intrusion on the statutory discretion of the DCI, which carries with it a serious potential for protracted litigation with respect to the appropriateness of the DCI's certification in each case. Moreover, the Order ties the denial and revocation of clearances and approvals to the legal standard of "reasonable doubt," another invitation for the entire program to be drawn into unnecessary and debilitating litigation.

Lieutenant General Colin L. Powell

Considerable effort has gone into this endeavor, and the draft Order addresses important issues in an area in which revision and clarification are long overdue. It is imperative, therefore, that every effort be undertaken to reach a solution. In this vein, we will provide you, under separate cover, language to amend the draft Order. As I believe the National Security Council Staff may be in the best position to facilitate an agreement, I urge you to convene a staff-level meeting of the affected agencies upon receipt of this language. I am hopeful that a resolution can be reached under NSC auspices which accommodates our concerns.

STAT



Robert M. Gates

*Colin - This poses a real problem which, failing a solution, I believe the Det would want to discuss with the President.*

STAT

OS/PPS  (17 Mar 88)

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